



February 27, 2003

HOUSE BILL No. 1680

DIGEST OF HB 1680 (Updated February 26, 2003 10:26 AM - DI 108)

Citations Affected: IC 28-1; noncode.

Synopsis: Use of banking terminology. Prohibits the deceptive use of an existing bank name. Provides a civil penalty of up to \$15,000 for each violation.

Effective: July 1, 2003.

Bardon, Koch, Burton

January 21, 2003, read first time and referred to Committee on Financial Institutions.
February 26, 2003, amended, reported — Do Pass.

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HB 1680—LS 6947/DI 108+



February 27, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1680

A BILL FOR AN ACT to amend the Indiana Code concerning financial institutions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-1-20-4, IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) Except as
3 provided in subsections (c), (d), (g), and (k), it is unlawful for any
4 person, firm, limited liability company, or corporation (other than a
5 bank or trust company, **bank holding company**, or corporate fiduciary
6 organized or reorganized under IC 28 or statutes in effect at the time of
7 organization or reorganization or under the laws of the United States):

8 (1) to use the word "bank", **banc**, or **banco** as a part of the name
9 or title of the person, firm, or corporation; or

10 (2) to advertise or represent the person, firm, limited liability
11 company, or corporation to the public:

12 (A) as a bank or trust company or a corporate fiduciary; or

13 (B) as affording the services or performing the duties which by
14 law only a bank or trust company or a corporate fiduciary is
15 entitled to afford and perform.

16 (b) A financial institution organized under the laws of any state or
17 the United States that establishes a branch office under this title is

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1 authorized to do business at that branch using a name other than the
2 name of its home office.

3 (c) Notwithstanding the prohibitions of this section, an out-of-state
4 financial institution with the word "bank" in its legal name may use the
5 word "bank" if the financial institution is insured by the Federal
6 Deposit Insurance Corporation or its successor.

7 (d) Notwithstanding subsection (a), a building and loan association
8 organized under IC 28-4 (before its repeal) may include in its name or
9 title:

10 (1) the words "savings bank"; or

11 (2) the word "bank" if the name or title also includes either the
12 words "savings bank" or letters "SB".

13 A building and loan association that includes "savings bank" in its title
14 under this section does not by that action become a savings bank for
15 purposes of IC 28-6.1.

16 (e) The name or title of a savings bank governed by IC 28-6.1 must
17 include the words "savings bank" or the letters "SB".

18 (f) A savings association may include in its name the words
19 "building and loan association".

20 (g) Notwithstanding subsection (a), a bank holding company (as
21 defined in 12 U.S.C. 1841) may use the word "bank" or "banks" as a
22 part of its name. However, this subsection does not permit a bank
23 holding company to advertise or represent itself to the public as
24 affording the services or performing the duties that by law a bank or
25 trust company only is entitled to afford and perform.

26 (h) The department is authorized to investigate the business affairs
27 of any person, firm, limited liability company, or corporation that uses
28 "bank", **banc**, or **banco** in its title or holds itself out as a bank,
29 corporate fiduciary, or trust company for the purpose of determining
30 whether the person, firm, limited liability company, or corporation is
31 violating any of the provisions of this article, and, for that purpose, the
32 department and its agents shall have access to any and all of the books,
33 records, papers, and effects of the person, firm, limited liability
34 company, or corporation. In making its examination, the department
35 may examine any person and the partners, officers, members, or agents
36 of the firm, limited liability company, or corporation under oath,
37 subpoena witnesses, and require the production of the books, records,
38 papers, and effects considered necessary. On application of the
39 department, the circuit or superior court of the county in which the
40 person, firm, limited liability company, or corporation maintains a
41 place of business shall, by proper proceedings, enforce the attendance
42 and testimony of witnesses and the production and examination of

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books, papers, records, and effects.

(i) The department is authorized to exercise the powers under IC 28-11-4 against a person, firm, limited liability company, or corporation that improperly holds itself out as a financial institution.

(j) A person, firm, limited liability company, or corporation who violates this section is subject to a penalty of ~~two~~ **five** hundred dollars (~~\$200~~) (**\$500**) per day for each and every day during which the violation continues. The penalty imposed shall be recovered in the name of the state on relation of the department and, when recovered, shall be paid into the financial institutions fund established by IC 28-11-2-9.

(k) The word "bank", **banc**, or **banco** may not be included in the name of a corporate fiduciary.

(l) No person, firm, limited liability company, or corporation may use the name of an existing bank or bank holding company or a name confusingly similar to that of an existing bank or bank holding company when marketing to or soliciting business from a customer or prospective customer if the reference to the existing bank or bank holding company is:

(1) without the consent of the existing bank or bank holding company; and

(2) in a manner that could cause a reasonable person to believe that the marketing material or solicitation:

(A) originated from;

(B) is endorsed by; or

(C) is in any other way the responsibility of;

the existing bank or bank holding company.

(m) An existing bank or bank holding company may, in addition to any other remedies available under the law, report an alleged violation of subsection (l) to the department. If the department finds that the marketing material or solicitation in question is in violation of subsection (l), the department may direct the person, firm, limited liability company, or corporation to cease and desist from using that marketing material or solicitation in Indiana. If that person, firm, limited liability company, or corporation persists using the marketing material or solicitation, the department may impose a civil penalty of up to fifteen thousand dollars (\$15,000) for each violation. Each instance in which the marketing material or solicitation is sent to a customer or prospective customer constitutes a separate violation of subsection (l).

(n) Nothing in subsection (l) or (m) prohibits the use of or reference to the name of an existing bank or bank holding company

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1 in marketing materials or solicitations, if the use or reference does
2 not deceive or confuse a reasonable person regarding whether the
3 marketing material or solicitation:

4 (1) originated from;

5 (2) is endorsed by; or

6 (3) is in any other way the responsibility of;
7 the existing bank or bank holding company.

8 (o) The department may adopt rules under IC 4-22-2 to
9 implement this section.

10 SECTION 2. [EFFECTIVE JULY 1, 2003] This act does not
11 affect:

12 (1) rights or liabilities accrued;

13 (2) penalties incurred;

14 (3) crimes committed; or

15 (4) proceedings begun;

16 before the effective date of this act. Those rights, liabilities,
17 penalties, crimes, and proceedings continue and shall be imposed
18 and enforced under prior law as if this act had not been enacted.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred House Bill 1680, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 5, after "trust company" insert ", **bank holding company**".

Page 1, line 8, after ""bank"" insert ", **banc, or banco**".

Page 2, line 28, after ""bank"" insert ", **banc, or banco**".

Page 3, line 6, strike "two" and insert "**five**".

Page 3, line 7, strike "(\$200) and insert "(\$500)".

Page 3, line 11, after ""bank"" insert ", **banc, or banco**".

Page 3, line 14, after "bank" insert "**or bank holding company**".

Page 3, line 14, delete "deceptively" and insert "**confusingly**".

Page 3, line 15, after "bank" insert "**or bank holding company**".

Page 3, line 17, after "bank" insert "**or bank holding company**".

Page 3, line 18, after "bank" insert "**or bank holding company**".

Page 3, line 24, after "bank" insert "**or bank holding company**".

Page 3, line 25, after "bank" insert "**or bank holding company**".

Page 3, line 27, after "to the" delete "commissioner" and insert "**department**".

Page 3, line 27, after "If the" delete "commissioner" and insert "**department**".

Page 3, line 29, delete "commissioner" and insert "**department**".

Page 3, line 33, delete "commissioner" and insert "**department**".

Page 3, line 34, delete "ten thousand dollars (\$10,000)" and insert "**fifteen thousand dollars (\$15,000)**".

Page 3, line 39, after "bank" insert "**or bank holding company**".

Page 4, line 4, after "bank" insert "**or bank holding company**".

and when so amended that said bill do pass.

(Reference is to HB 1680 as introduced.)

BARDON, Chair

Committee Vote: yeas 12, nays 0.

